212.7002–2 Subcontracts under the program.

(a) A subcontract for an item or process that does not meet the definition of ''commercial item'' may be treated as a subcontract for a commercial item, if the subcontract—

(1) Is for the production of an item or process begun as a prototype project under an other transaction agreement or as a research project carried out in accordance with 10 U.S.C. 2371;

(2) Does not exceed $50,000,000;

(3) Is awarded on or before September 30, 2010;

(4) Is awarded to a nontraditional defense contractor; and

(5) Is either—

(i) A firm-fixed-price subcontract; or

(ii) A fixed-price subcontract with economic price adjustment.

(b) See 212.7003 for special procedures pertaining to technical data and computer software.

[71 FR 18669, Apr. 12, 2006, as amended at 73 FR 21845, Apr. 23, 2008; 74 FR 2416, Jan. 15, 2009]

212.7002–3 Thresholds.

The contract and subcontract thresholds at 212.7002–1(a)(3) and 212.7002–2(a)(2) include the dollar value of all options in accordance with section 826 of the National Defense Authorization Act for Fiscal Year 2011. See also FAR 1.108(c).

[76 FR 33171, June 8, 2011]

212.7003 Technical data and computer software.

For purposes of establishing delivery requirements and license rights for technical data under 227.7102 and for computer software under 227.7202, there shall be a rebuttable presumption that items or processes acquired under a contract or subcontract awarded in accordance with 212.7002 were developed in part with Federal funds and in part at private expense (i.e., mixed funding).

(a) *Delivery requirements.* Acquire only the technical data and computer software that are necessary to satisfy agency needs. Follow the requirements at 227.7103–1 and 227.7103–2 for technical data, and 227.7203–1 and 227.7203–2 for computer software.

(b) *License rights.* Acquire only the license rights in technical data and computer software that are necessary to satisfy agency needs.

(1) For technical data, use the clauses at 252.227–7013, Rights in Technical Data—Noncommercial Items, and 252.227–7037, Validation of Restrictive Markings on Technical Data.

(2) For computer software, use the clauses at 252.227–7014, Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation, and 252.227–7019, Validation of Asserted Restrictions—Computer Software.

(3) Require the contractor to include the clauses prescribed by paragraphs (b)(1) and (2) of this section in subcontracts awarded in accordance with 212.7002–2.

(4) When the standard license rights for items or processes developed with mixed funding do not provide the minimum rights necessary to satisfy agency needs, negotiate for special license rights in accordance with 227.7103–5(d) and 227.7203–5(d).

[71 FR 18669, Apr. 12, 2006]

Subpart 212.71—Pilot Program for Acquisition of Military-Purpose Nondevelopmental Items

212.7100 Scope.

This subpart establishes the pilot program authorized by section 866 of the National Defense Authorization Act for Fiscal Year 2011 (Pub. L. 111–383).

212.7101 Definitions.

Military-purpose nondevelopmental item, nondevelopmental item, and *nontraditional defense contractor,* as used in this subpart, are defined in the provision at 252.212–7002.

212.7102 Pilot program.

212.7102–1 Contracts under the program.

The contracting officer may enter into contracts with nontraditional defense contractors for the acquisition of